

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date **February 8, 2006** Time **9:30 to 4:30 PM** Place **Title West Co., 2735 E. Parleys Way, Suite 207, Salt Lake City, UT**

Attendees = x

Commission Members

xChairman, Joyce W. Clark, *Washington* xDarwin L. Johnson, *Wasatch*
xDavid M. Lattin, Salt Lake xGlen W. Roberts, Utah xR. Curt Webb, Cache

Department Staff

xJohn E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	Brad Tibbitts <i>Director, P&C</i>	xGerri Jones <i>MC Examiner</i>
xSheila Curtis <i>MC Examiner</i>	Gale Lemmon <i>AG Prosecutor</i>	xJilene Whitby <i>PIO/Recorder</i>	

Visitors

Cort Ashton, <i>Cottonwood Title</i>	Scott Halvorsen, <i>Integrated Title</i>
Donna W. Thompson, <i>U.S. Title</i>	Sheila Allred, <i>Integrated Title</i>
Kay Arnold, <i>Kay Berger Inc. Realtors</i>	

Minutes

Welcome and Introductions – Chairman, Joyce Clark

Joyce started the meeting at 9:41 a.m.

Adoption of Minutes of Previous Meeting

Darwin made a **motion** to accept the minutes without change. David seconded the motion, which was approved unanimously.

Old Business

- I. **Review & Concur with Licensee Report** / Mickey Braun
Reports for December and January were presented. Darwin made the **motion** to concur with the reports and Curt seconded it. The vote was unanimous.
- II. **Review & Concur with Enforcement Case Report** / Mickey Braun
None to report.
- III. **Action Items from Previous Meeting**
 - **Can Missed Questions be Reviewed After Taking a Test?** / Mickey Braun
Pending.
 - **Results of Escrow Cost Analysis Survey?** / Gerri Jones
Commission members received no surveys. Gerri said she would collect some information from annual statements when they are received in April.
 - **Discussion with Utah Association of Realtors** / Curt Webb
Curt met with UAR's legislative committee. They are very resistant to changing the status quo on split closings and oppose anything new on REPC.
- IV. **Concurrent second mortgages** / Donna Thompson
Donna asked if it was all right for America First Credit Union to close second mortgages with no additional charges since all documents are in the same closing package?
 - Joyce said other credit unions would soon follow suit.

- Darwin did not think this was a problem except that the second would soon be as thick as the primary. Is the underwriter willing to cover the second? Are there two separate sets of instructions? If so the underwriter may consider the second another transaction.
- Joyce wondered if it would be listed as a subordinate transaction on the policy?
- Gerri said it was important that lenders and underwriters be aware of this situation and a disclosure be provided.
- Glen asked, "Is a service being provided without compensation?" At what point does it become an additional service?
- Perri said that since America First is already doing this they should provide us with a legal opinion of why they are not subject to an additional charge.
- Curt said that since the insurer is responsible for the money if it counts as a single transaction.
- Glen said if they are handling funds then a fee should be charged.
- Cort said the Federal FHA rule should supersede state law.
- Curt – One charge for one transaction.
- Gerri – The statute requires the charge not be below the cost of doing business. The rule does not require each transaction be charged. The answer may be in the Schedule of Charges for R592-4.

IV. **Review Proposed Changes to R592-3 & 4 / Mickey Braun**

- **Rule R592-3, Submission of a Title Schedule of Escrow Charges Filing**
 - Section 3 describes how documents are to be used.
 - The Definition section now includes "filer."
 - The names of documents have been changed.
 - Section 7 is new. It provides instructions about corresponding with the department.
 - Jilene noted that dates do not need to be used in conjunction with Utah forms listed in Subsection 3(2) of the rule.
 - Perri proposed further changes to the rule R592-3.
 - Replace period with colon in Subsection R592-3-6.(3)(b) then add "and".
 - Subsection (3)(c), change "I" in "If" to lower case.
- **Rule R592-4, Standards for Charges for Title Escrow Settlement**
 - Transmittal Form: Delete the last sentence in Question 9. The space for Question 12.b.iii. is too wide.
 - The Schedule of Escrow Charges form is new.
 - The Title Marketing Information Package Filing Schedule is to be filed with title marketing information packages.
 - The rule has changed little. Escrow charges have been separated from others. The rule adopts the standard that one cannot charge less than the cost. Time and energy is covered in additional charges.
 - Curt would like to be able to also charge based on sales price due to increased risk. The risk is a part of the cost
 - Cort said it was inconsistent with the code requirement to charge no more than the cost and to have a minimum charge requirement in the rule.
 - Mickey stated that the Commission's job was to set standards and the department's job was to regulate those standards, as long as both follow the law.
 - Curt made a **motion** to delete Subsection 5.(1)(a)(ii), which was seconded by Darwin. The vote was unanimous.
 - Subsection 5.(1)(b), "Additional escrow work charges," has been added. It provides a way to adjust charges. Glen asked why this was needed if there is no limit? Curt asked about doc prep fees? Cort filed his as an hourly fee. Curt made the **motion** to leave it in. Glen seconded the motion, which was approved unanimously.

- Mickey said the rule would give the department a handle on regulating rates used in the title business. Other lines of insurance are already regulated similarly. Curt made a **motion** to send both rules as amended to rulemaking. Further changes can be made later.
- Perri proposed further changes to the rule R592-4.
 - Subsection 2.(2), Add to the end of sentence, "in Utah."
 - Subsection 3.(1), Add "-not specifically shown" after "excess of the escrow settlement services." Delete next word, "included." Replace "shown" with "listed".
 - Subsection 3.(8), Add "Package" after "Marketing Information".
 - Subsection 3.(10), The term defined should be "Other Service Fee".
 - Subsection 3.(11), Eliminate hyphen from "Pass-through".
 - Replace colon with a period on Section 5, Subsections (1), (1)(a), (1)(b), (1)(c), and (2)
 - Subsection 6.(1), Delete "An" and make "O" in "other" upper case.
 - In Subsection 8. Sheila suggested eliminating the hyphen between "45 days".
- Darwin made a **motion** to accept both rules as amended and start the formal rulemaking process. Curt seconded the motion and the vote was unanimous.
- Mickey reviewed the process to notify the title industry of this new rule and its requirements. Once the rule goes into effect a notice will be mailed to title producers, agencies and companies. They will be advised to file their rates with the department using the Schedule of Charges.
- The Commission discussed the Enforcement Date Section of the rule. This section allowed 45 days after the effective date of the rule for licensees to comply with its requirements. Glen made a **motion** to increase the time to 90 days on both rules. Darwin seconded the motion and the vote was unanimous in its favor.
- **Legislative Review**
 The Commission reviewed real estate and title bills before the legislature. It was decided that Glen would represent the Commission at the next legislative standing committee meeting in which HB233, Insurance Licensing Amendments, will be discussed. Curt quoted Neal Gooch as saying that due to problems with the title changes made in this bill, title changes for next year would be run in a separate bill.

V. **Feedback regarding Title Convention**

- Joyce said a number of people thought the Commission was organized to refer complaints to the department and make sure they are handled properly and quickly. She asked if the Commission could do this.
- Curt said complainants are not getting feedback regarding their complaints. The Real Estate Division has a monthly complaint report. A similar report from the department would solve this problem.
- Gerri said the department was working on a response letter. Complaints are prioritized according to the seriousness of the complaint. Joyce asked if the Commission could prioritize the complaints? Perri and Mickey said they could.
- Gerri noted that before the department can penalize anyone they must have proof.
- Joyce asked what the Commission could do to help with this process? Mickey said, "The Commission needs to demand from us what our workload is. You can help by going to the legislature for more people to help." The Commission can become involved in the triage of complaints.
- Curt asked if the complaint information could be put on the web? It can, minus the use of names. It can show the number of various types of violations and the processing time. Most of it will have to be done manually.
- Curt said that if complaints were sent thru the Commission, Commission members would then be expected to keep track of them and respond to the complainant.

- Mickey noted that a peer complainant would not receive a response by letter. That is protected information.
- Curt felt that all complainants should receive acknowledgement from the department and reason for not investigating. David said that a regulator does not want to tell someone they are not investigating a violation because then it opens the door for everyone to violate the law. Glen noted that they should have feedback if there is insufficient evidence. Mickey said the department would work on it. Feedback can sometimes result in a licensee using the information against their competition. David felt that the only response a person should receive is that their complaint was received. Only the victim should know what the regulator is doing.

VII. Report for the Liaison Committee meeting / Joyce Clark

Joyce met with ULTA. She agreed to meet with them at their regular time on the first Monday of the month. She encouraged Commission members to attend if they could. She will let Jilene know where it will be so Jilene can notify the Commission members.

VIII. County Recorders Office Meeting with Commission / Joyce Clark

The county recorder's association wants to meet with the Commission quarterly. Commission members felt it would be better if the association meet with ULTA's Liaison Committee. Those issues they agree upon should then be brought to the Commission.

IX. Input on Fiduciary Rule by Kay Berger

Kay introduced herself as a small business owner of Kay Berger Realtors. She expressed several concerns that had confronted her recently. She said she would not name specific people or companies.

- A brokerage she was working with on a transaction put all of their client's earnest money with the title agency. We told them they couldn't do this so they gave it to us to keep in our trust account.
- A large company is having the people they work with make their checks out to a title agency, rather than depositing it into their own trust account. What are these title agencies doing with it? Title companies are accepting money without receipting REPCs.
- Agents and realtors need educating. No one is responsible for anyone. There are too many agents under one or two brokers.
- Another issue is split closings. Ninety-nine percent of real estate agents are placing the title insurance. The person that ought to be placing it is the purchaser. They are the one that will be harmed if there is a problem. It creates a greater mess as there are more people one has to deal with in a closing, i.e., CSR's, escrow assistants, escrow officers, etc. A split closing doubles the number of people involved.
- Kay suggested negotiating which title agency would handle the title work starting at the REPC. It used to be one page. "Title insurance" needs to be defined. Meet with and train Utah Association of Realtors (UAR) about title insurance. Cort agreed. He suggested modeling after Texas's law.

X. Break for Lunch 12:45 p.m.

Resumed at 12:20 p.m.

XI. Fiduciary Rule

- Curt suggested that anytime a change is made that we need to analyze how radical it is, how much it will affect the market, and if there is justification for such a change. We don't have evidence that split closings are bad. All agree a single fiduciary is best if it is them. The fiduciary rule is the middle ground. When two title companies are involved the lender's title company will be the primary fiduciary. At first we felt we would need the support of UAR to make the changes we were considering. They will not support it. If we are going to fight a battle why not fight it back to the way it used to be? However, we are not unified and our reasons are not strong. If we do a single closing and a single fiduciary then underwriters will back us.

- Glen noted that he has not talked to anyone that likes split closings. All are afraid to do something about it. ULTA won't take a stand.
- What states have split closings? Gerri did not know of any. Glen said that Utah was the only state west of the Mississippi allowing them. Joyce said she was in favor of a single fiduciary.
- Curt asked what problems the Commission were trying to address? If you want to protect the buyer then put something in the rule to fix it.
- Glen asked if the Attorney General's office filed an opinion that addressed the fiduciary issue. Perri and Mickey said they did. Perri noted that it was up to the department to determine if the opinion should be published. Perri and Mickey will see if they can find it and then make that decision.
- Glen said that a split closing is fundamentally wrong because it is hard to determine who is in charge of the money. Curt asked if fiduciary responsibilities could be split? Perri thought this was discussed in the memo to the department. Glen said that if a fiduciary is the agent to one party or the other in a transaction then they no longer have fiduciary responsibility or duty. The problem with two sets of eyes looking at a deal is that each set only sees one side of it. Gerri noted that the department has had problems related to split closings but few complaints. Curt noted that Perri said you couldn't contractually share fiduciary responsibility. Curt said the strong sellers would negotiate their fiduciary as the primary one.
- Glen has researched case law, which supports that there cannot be two fiduciaries in the same transaction.
- Glen suggested going to underwriters to see what their experience has been.
- Scott noted that Integrated Title was not opposed to having one fiduciary. But if the way things are currently being done is changed, it will complicate things in the future.
- Curt agreed with Glen. A case needs to be built. Glen suggested getting more input like Kay's. It was agreed that she was in the minority. We need proof from underwriters and Gerri. Curt also noted they need the AG's opinion in a format that can be released. Commission members will go to their underwriters for proof and input. Joyce will contact the rest of the underwriters and Pete.
- Perri will send the AG opinion to Mickey who will then decide if and how to release the information in the opinion.

New Business

None

Next meeting

Thursday, March 2, 9:30 a.m., at Title West again.

Adjourned

Darwin made the **motion** to adjourn and David seconded it.

Other Business from Committee Members

Next Meeting

9:30 a.m., Room 3112, State Office Building

January 11, 2006	July 12, 2006
February 8, 2006	August 9, 2006
March 2, 2006	September 13, 2006
April 12, 2006	October 11, 2006
May 10, 2006	November 8, 2006
June 14, 2006	December 13, 2006